

**ASSEMBLY BILL**

**No. 1852**

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**Introduced by Assembly Member Campos**

February 19, 2014

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An act to add Chapter 2.8 (commencing with Section 18950) to Division 8 of the Business and Professions Code, and to amend Section 11105.3 of the Penal Code, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

AB 1852, as introduced, Campos. Business: services to minors: background checks.

Existing law generally provides requirements for the licensing of business establishments. Existing law authorizes specified entities to receive state summary criminal history information from the Department of Justice. Existing law prohibits an employer, as a condition of employment, from asking an applicant to disclose information regarding an arrest that did not result in a conviction, as specified.

This bill would require a business that provides services to minors, as defined, to provide written notice to the parent or guardian of a youth participating in the service offered by the business regarding the business's policies relating to criminal background checks for employees who provide services to minors, as specified. This bill would also authorize a business that provides services to minors to receive summary criminal history from the Department of Justice and subsequent arrest notification and would also provide that the use of that information by the business would not violate specified employment laws.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Chapter 2.8 (commencing with Section 18950) is added to Division 8 of the Business and Professions Code, to read:

CHAPTER 2.8. BUSINESSES PROVIDING SERVICES TO MINORS

18950. (a) (1) A business that provides services to minors shall, as a condition of obtaining and maintaining a business license, provide written notice to the parent or guardian of any minor receiving those services regarding the business's policies relating to obtaining criminal background checks for its employees.

(2) If criminal background checks are obtained for employees, the written notice described in paragraph (1) shall also contain a statement regarding whether the criminal background check includes state and federal criminal history information and the nature of the type of offenses the program looks to identify.

(b) (1) As used in this section, a "business that provides services to minors" means a business that meets both of the following requirements:

(A) Its primary purpose is the providing an extracurricular service or program of instruction for youth under 18 years of age.

(B) It has adult employees who have supervisory or disciplinary power over a child or children.

(2) A "business that provides services to minors" shall not include a licensed child day care facility as defined in Section 1596.750 of the Health and Safety Code or a day care center as defined in Section 1596.76 of the Health and Safety Code.

(c) As used in this section, "written notice" may include a posting on the business's Internet Web site.

(d) Nothing in subdivision (a) shall require or authorize a business subject to these provisions to disclose confidential criminal history information in violation of Article 3 (commencing with Section 11100) of Chapter 1 of Title 1 of Part 4 of the Penal Code.

(e) Compliance with this section shall not be deemed a violation of Section 432.7 of the Labor Code.

SEC. 2. Section 11105.3 of the Penal Code is amended to read:

1 11105.3. (a) Notwithstanding any other law, a human resource  
2 agency or an employer may request from the Department of Justice  
3 records of all convictions or any arrest pending adjudication  
4 involving the offenses specified in subdivision (a) of Section 15660  
5 of the Welfare and Institutions Code of a person who applies for  
6 a license, employment, or volunteer position, in which he or she  
7 would have supervisory or disciplinary power over a minor or any  
8 person under his or her care. The department shall furnish the  
9 information to the requesting employer and shall also send a copy  
10 of the information to the applicant.

11 (b) Any request for records under subdivision (a) shall include  
12 the applicant's fingerprints, which may be taken by the requester,  
13 and any other data specified by the department. The request shall  
14 be on a form approved by the department, and the department may  
15 charge a fee to be paid by the employer, human resource agency,  
16 or applicant for the actual cost of processing the request. However,  
17 no fee shall be charged to a nonprofit organization. Requests  
18 received by the department for federal level criminal offender  
19 record information shall be forwarded to the Federal Bureau of  
20 Investigation by the department to be searched for any record of  
21 arrests or convictions.

22 (c) (1) Where a request pursuant to this section reveals that a  
23 prospective employee or volunteer has been convicted of a  
24 violation or attempted violation of Section 220, 261.5, 262, 273a,  
25 273d, or 273.5, or any sex offense listed in Section 290, except  
26 for the offense specified in subdivision (d) of Section 243.4, and  
27 where the agency or employer hires the prospective employee or  
28 volunteer, the agency or employer shall notify the parents or  
29 guardians of any minor who will be supervised or disciplined by  
30 the employee or volunteer. A conviction for a violation or  
31 attempted violation of an offense committed outside the State of  
32 California shall be included in this notice if the offense would have  
33 been a crime specified in this subdivision if committed in  
34 California. The notice shall be given to the parents or guardians  
35 with whom the child resides, and shall be given at least 10 days  
36 prior to the day that the employee or volunteer begins his or her  
37 duties or tasks. Notwithstanding any other provision of law, any  
38 person who conveys or receives information in good faith and in  
39 conformity with this section is exempt from prosecution under  
40 Section 11142 or 11143 for that conveying or receiving of

1 information. Notwithstanding subdivision (d), the notification  
2 requirements of this subdivision shall apply as an additional  
3 requirement of any other provision of law requiring criminal record  
4 access or dissemination of criminal history information.

5 (2) The notification requirement pursuant to paragraph (1) shall  
6 not apply to a misdemeanor conviction for violating Section 261.5  
7 or to a conviction for violating Section 262 or 273.5. Nothing in  
8 this paragraph shall preclude an employer from requesting records  
9 of convictions for violating Section 261.5, 262, or 273.5 from the  
10 Department of Justice pursuant to this section.

11 (d) Nothing in this section supersedes any law requiring criminal  
12 record access or dissemination of criminal history information. In  
13 any conflict with another statute, dissemination of criminal history  
14 information shall be pursuant to the mandatory statute. This  
15 subdivision applies to, but is not limited to, requirements pursuant  
16 to Article 1 (commencing with Section 1500) of Chapter 3 of, and  
17 Chapter 3.2 (commencing with Section 1569) and Chapter 3.4  
18 (commencing with Section 1596.70) of, Division 2 of, and Section  
19 1522 of, the Health and Safety Code, and Sections 8712, 8811,  
20 and 8908 of the Family Code.

21 (e) The department may adopt regulations to implement the  
22 provisions of this section as necessary.

23 (f) As used in this section, “employer” means any nonprofit  
24 corporation or other organization specified by the Attorney General  
25 which employs or uses the services of volunteers in positions in  
26 which the volunteer or employee has supervisory or disciplinary  
27 power over a child or children.

28 (g) As used in this section, “human resource agency” means a  
29 public or private entity, excluding any agency responsible for  
30 licensing of facilities pursuant to the California Community Care  
31 Facilities Act (Chapter 3 (commencing with Section 1500)), the  
32 California Residential Care Facilities for the Elderly Act (Chapter  
33 3.2 (commencing with Section 1569)), Chapter 3.01 (commencing  
34 with Section 1568.01), and the California Child Day Care Facilities  
35 Act (Chapter 3.4 (commencing with Section 1596.70)) of Division  
36 2 of the Health and Safety Code, responsible for determining the  
37 character and fitness of a person who is:

38 (1) Applying for a license, employment, or as a volunteer within  
39 the human services field that involves the care and security of  
40 children, the elderly, the handicapped, or the mentally impaired.

1 (2) Applying to be a volunteer who transports individuals  
2 impaired by drugs or alcohol.

3 (3) Applying to adopt a child or to be a foster parent.

4 (h) Except as provided in subdivision (c), any criminal history  
5 information obtained pursuant to this section is confidential and  
6 no recipient shall disclose its contents other than for the purpose  
7 for which it was acquired.

8 (i) (1) As used in this subdivision, “community youth athletic  
9 program” means an employer having as its primary purpose the  
10 promotion or provision of athletic activities for youth under 18  
11 years of age.

12 ~~(j)~~

13 (2) A community youth athletic program, ~~as defined in~~  
14 ~~subdivision (i)~~, may request state and federal level criminal history  
15 information pursuant to subdivision (a) for a volunteer coach or  
16 hired coach candidate. The director of the community youth athletic  
17 program shall be the custodian of records.

18 ~~(k) The~~

19 (3) A community youth athletic program may request from the  
20 Department of Justice subsequent arrest notification service, as  
21 provided in Section 11105.2, for a volunteer coach or a hired coach  
22 candidate.

23 (j) (1) *A business licensee subject to the provisions of Section*  
24 *18950 of the Business and Professions Code is an employer for*  
25 *purposes of subdivision (a).*

26 (2) *A business licensee described in paragraph (1), may request*  
27 *from the Department of Justice subsequent arrest notification*  
28 *service, as provided in Section 11105.2, for an employee of the*  
29 *business.*

30 ~~(l)~~

31 (k) Compliance with this section does not remove or limit the  
32 liability of a mandated reporter pursuant to Section 11166.

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